

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

IN RE:

CIRCUIT CITY STORES, INC., *et al.*

Debtors.

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Case No. 08-35653-KRH

Chapter 11

**COMMONWEALTH OF VIRGINIA DEPARTMENT OF TAXATION'S RESPONSE TO  
LIQUIDATING TRUST'S NOTICE OF SUBSTANTIVE HEARING ON OBJECTION  
TO CLAIM NOS. 12898 AND 14636**

The Commonwealth of Virginia, Department of Taxation (“the Department”), will attend by counsel the hearing scheduled for November 15, 2017. The Department will argue that the Liquidating Trust’s Notice of an intention to seek reduction of the Department’s claims based on the Virginia Supreme Court’s Decision in *Kohl’s Department Stores, Inc. v. Virginia Department of Taxation* is premature. Kohl’s has filed a Petition for Rehearing which is currently pending before the Supreme Court rendering the decision non-final until the Supreme Court grants or rejects the petition. Moreover, if the Supreme Court does grant the petition, it is possible the current decision could be entirely reversed. This development would entirely moot the Trust’s current initiative to partially revise the Departments income tax assessments based on Kohl’s “alternative augment.” Even assuming *arguendo*, that the Kohl’s Petition for Rehearing is denied, it is critical to note that the Supreme Court remanded Kohl’s prevailing “alternative argument” back to the Circuit Court for a further evidentiary hearing and legal argument. It is entirely possible, if not likely, that a further appeal to the Supreme Court may flow from this hearing on remand.

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF TAXATION

BY: /s/Mark K. Ames  
Mark K. Ames VSB #27409  
TAXING AUTHORITY CONSULTING SERVICES, P.C.  
P.O. Box 31800  
Henrico, VA 23294  
[mark@taxva.com](mailto:mark@taxva.com)  
9804)545-9399

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was sent this 3rd day of November 2017 to the Trust's counsel via ECF.

/s/ Mark K Ames  
Mark Ames